

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Regulation of the)	
Purchased Gas Adjustment Clauses)	
Contained within the Rate Schedules of)	Case No. 18-0218-GA-GCR
Duke Energy Ohio Inc., and Related)	
Matters.)	

In the Matter of the Audit of the)	
Uncollectable Expense Rider of Duke)	Case No. 18-0318-GA-UEX
Energy Ohio Inc., and Related Matters.)	

In the Matter of the Application of Duke)	
Energy Ohio Inc., for Approval of an)	Case No. 18-0418-GA-PIPP
Adjustment to its Interim and Temporary)	
PIPP Plan and Rider Case)	

POST HEARING REPLY BRIEF OF INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

On September 10, 2019, the Public Utilities Commission of Ohio (“Commission”) held an evidentiary hearing to evaluate the reasonableness of the Stipulation and Recommendation (“Stipulation”)¹ that Duke Energy Ohio, Inc. (“Duke”) filed in the above-captioned proceeding. Following the hearing, the three signatory parties to the Stipulation – Duke, Commission Staff, and Interstate Gas Supply, Inc. (“IGS”) – separately filed initial briefs in support of the negotiated settlement. The Office of the Ohio Consumers’ Counsel (“OCC”) filed an initial brief in opposition. The OCC is the only party to this proceeding to oppose the Stipulation.²

¹ Stipulation and Recommendation (July 26, 2019) (hereinafter “Stipulation”).

² See *Generally* Initial Brief by the Office of the Ohio Consumers’ Counsel (October 15, 2019) (hereinafter “OCC Initial Brief”).

The signatory parties agree that the Commission should adopt the Stipulation without modification because it resolves all issues raised in the accounting and management performance audits in a manner that benefits ratepayers and serves the public interest.³ The OCC, on the other hand, opposes the Stipulation and argues that it violates regulatory principles of cost-causation and falls short of benefitting customers and the public interest, because it does not properly allocate propane commodity costs during the audit period nor refund those costs to GCR customers.⁴ The OCC also urges the Commission to modify the Stipulation because it did not incorporate OCC's requests to replace Duke's GCR with a standard service offer auction or to include aggregated shadow-billing data on customers' bills.⁵ As an aside, the OCC also reaffirms its objection and motion to strike the oral testimony that Jerome D. Mierzwa, Principal and Vice President of Exeter Associates, Inc, provided at hearing on a finding that the testimony is irrelevant.⁶

Predictably, the arguments raised in OCC's initial brief are no different from those it presented in its pre-filed written and sworn testimony. Both IGS and Duke established in their initial briefs that the testimony OCC submitted in opposition to the Stipulation is

³ See *Generally* Initial Post Hearing Brief of Interstate Gas Supply, Inc., Post Hearing Brief of Duke Energy Ohio, Inc., and Post Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (October 15, 2019).

⁴ OCC Initial Brief at 9, 16.

⁵ *Id.* at 4.

⁶ *Id.* at 17.

meritless.⁷ For the reasons set forth below, the Commission should dismiss OCC's claims and approve the Stipulation without modification.

II. DISCUSSION

The question pending before the Commission is whether the Stipulation satisfies its three-part test for consideration of contested settlements. Under that test, the Commission must find a Stipulation and Recommendation just and reasonable where: (1) the settlement is a product of serious bargaining among capable, knowledgeable parties; (2) the settlement, as a package, benefits ratepayers and the public interest; and (3) the settlement does not violate any important regulatory principle or practice.⁸ The signatory parties established in their initial briefs that the Stipulation satisfies the Commission's three-part test. The OCC failed to refute that position. Accordingly, the Commission should reject OCC's arguments and approve the Stipulation without modification.

A. OCC's Argument that the Stipulation Fails the Second Prong of the Commission's Test is Meritless.

The OCC maintains that the Stipulation is not in the public interest.⁹ Specifically, OCC argues that the Stipulation fails to satisfy the second prong of the Commission's test because it does not properly allocate propane commodity costs to CHOICE customers that "benefitted from the use of the propane to balance [Duke's] system during periods of peak usage during the audit period."¹⁰ For that reason, OCC recommends that the

⁷ See *Generally* Initial Post Hearing Brief of Interstate Gas Supply, Inc., Post Hearing Brief of Duke Energy Ohio, Inc.,

⁸ See *In re Application of Columbus S. Power Co.*, Case No. 09-1089-EL-POR, Opinion and Order at 21 (May 13, 2010).

⁹ OCC Initial Brief at 5.

¹⁰ *Id.* at 9.

Commission amend the Stipulation to include the incremental costs incurred during the audit period in Duke's nonbypassable Contract Commitment Cost Recovery Rider ("CCCR"), and to require a refund of those costs to gas cost recovery ("GCR") customers.¹¹ The OCC also argues that the Stipulation is not in the public interest because it did not incorporate OCC's request to include aggregated shadow-billing data on customers' bills.¹² Neither of OCC's arguments are valid.

i. The OCC's Recommendation to Retroactively Assess Propane Commodity Costs to Suppliers Contravenes the Plain Language of Duke's FRAS Tariff and Should Be Dismissed.

As IGS'¹³ and Duke¹⁴ set forth in their initial briefs, the OCC's argument disregards the plain language of Duke's Full Requirements Aggregation Service ("FRAS") tariff and should be dismissed. Since 2005, Duke's FRAS tariff has afforded suppliers the *option* to use an allocated share of Duke's propane facilities to meet customer requirements during periods of peak or design day demand, and to pay the full cost of that propane *only when suppliers opted to use it*.¹⁵ (emphasis added). In all other situations, the tariff provides that Duke's propane commodity charge shall be expressly bypassable;¹⁶ and Duke has adhered to those requirements by "correctly charg[ing] [suppliers] according to

¹¹ *Id.*

¹² OCC Initial Brief at 9.

¹³ Initial Post Hearing Brief of Interstate Gas Supply, Inc. at 9.

¹⁴ Post Hearing Brief of Duke Energy Ohio, Inc. at 4.

¹⁵ *Id.* at 4.

¹⁶ Schedule of Rates, Classifications, Rules, and Regulations for Gas Service of Duke Energy Ohio, Addendum to Sheet No. 44 at 25.

its Commission-approved tariff” for the last fourteen years.¹⁷ The audit confirms that suppliers declined to utilize their allocated share of Duke’s propane facilities during the audit period and, instead, obtained additional supply through other sources.¹⁸ Nevertheless, the OCC seeks to punish suppliers and their customers for operating within the market rules during that timeframe.

OCC’s recommendation also ignores potential administrative challenges given that Duke would be required to identify every customer that took competitive supply during the audit period to accurately assess, and refund, those incremental propane commodity costs.¹⁹ As OCC acknowledges, customers move in and out of Duke’s service territory with regularity so there’s a substantial likelihood that the number of customers taking competitive supply/GCR service is markedly different today than it was during the audit period.²⁰ Since OCC’s recommendation is also rife with administrative hurdles, it should not be adopted.

Through the settlement in this proceeding, the signatory parties have proposed to allocate to Duke’s CCCR future incremental cost of propane utilized for system integrity.²¹ In doing so, the signatory parties have fine-tuned Duke’s FRAS tariff in a manner that will provide future pricing certainty for market participants and thereby benefit consumers in Duke’s service territory. The negotiated outcome benefits ratepayers, it serves the public

¹⁷ Post Hearing Brief of Duke Energy Ohio, Inc. at 4.

¹⁸ Commission-Ordered Exhibit 4 at 6-23:24.

¹⁹ Tr. at 54-55.

²⁰ *Id.*

²¹ Stipulation at ¶ 7.

interest, and does not punish suppliers or their customers for compliance with Duke's FRAS tariff during the audit period. Accordingly, the OCC's recommendation to amend the Stipulation and require choice customers to retroactively pay a propane charge that is expressly bypassable under Duke's current tariff should be dismissed.

ii. The OCC's Recommendation Regarding Duke's Implementation of a Shadow-Billing Functionality is Based Upon Flawed Reasoning, is Beyond the Scope of this Proceeding, and Should Be Dismissed.

Although the OCC acknowledges that the auditor did not examine the difference between Duke's GCR commodity price and suppliers' price for natural gas during the audit period, it insists that the Commission amend the Stipulation to require Duke to implement a shadow-billing mechanism.²² The OCC claims that without that billing functionality the Stipulation falls short of benefitting ratepayers and the public interest.

As an initial matter, the OCC's shadow-billing recommendation should be denied because it does not provide a true and accurate comparison of supplier commodity pricing to GCR customer pricing. As OCC concedes, there are a variety of different factors that contribute to a supplier's natural gas price.²³ OCC, for example, identified variables such as contract length, fixed vs. variable rate options, and the presence of early termination fees as just some of the factors used by competitive retail natural gas suppliers to calculate their commodity price.²⁴ Those pricing variables are intended to reflect market conditions over the duration of the supply contract and appear to play no role in the

²² OCC Initial Brief at 15.

²³ Tr. at 54-55.

²⁴ Tr. at 51-53.

composition of Duke's GCR price. Accordingly, OCC's shadow-billing recommendation is meaningless insofar as it is unable to provide a true "apples-to-apples" pricing comparison as it intends.

Nevertheless, IGS²⁵ and Duke²⁶ agree that the OCC's shadow-billing claim was fully litigated in Duke's prior GCR audit and should be dismissed. There, the Commission held that the OCC's request to modify a GCR Stipulation to provide a comparison of Duke's GCR price to suppliers' prices for natural gas was outside the scope of the proceeding and had "no bearing on whether the Stipulation meets the three-part test."²⁷ The pricing disclosure mechanism was not put at issue in either the management performance audit or the Stipulation, and OCC has offered no new arguments to support its shadow-billing claim; therefore, its argument is irrelevant to this proceeding and should be dismissed.

Finally, OCC's shadow-billing request is also administratively burdensome. Duke indicated that the implementation of OCC's shadow-billing proposal "would require extensive revisions to the Company's current billing systems, or the dedication of numerous hours to manually gather the data" since it does not compare the GCR to supplier pricing on a regular basis.²⁸ The Stipulation, however, presents no such administrative issues. The signatory parties' initial briefs established that the Stipulation

²⁵ Initial Post Hearing Brief of Interstate Gas Supply, Inc. at 11.

²⁶ Post Hearing Brief of Duke Energy Ohio, Inc. at 5.

²⁷ See *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 15-218-GA-GCR et al., Opinion and Order, at ¶59 (September 7, 2016).

²⁸ Post Hearing Brief of Duke Energy Ohio, Inc. at 6.

benefits ratepayers and serves the public interest. The foregoing also demonstrates that OCC's shadow-billing data request is not only irrelevant to a GCR proceeding, but impractical as well. Accordingly, the Commission should deny OCC's shadow-billing implementation request.

B. The Stipulation Does Not Violate any Important Regulatory Principle or Practice.

OCC argues that the Stipulation violates regulatory principles of cost-causation by failing to properly allocate propane commodity costs to suppliers during the audit period.²⁹ OCC also asserts that the Stipulation violates regulatory practice by failing to adopt a billing mechanism that provides a comparison of Duke's GCR price to suppliers' price for natural gas.³⁰ Here again, each of the OCC's arguments fail to refute the signatory parties' contention that the Stipulation satisfies the Commission's three-part test.

The signatory parties' agreement to allocate propane commodity costs on a forward-looking basis is a logical, equitable outcome that resolves the concerns identified in the management performance audit without retroactively penalizing suppliers for compliance with Duke's FRAS tariff during the audit period.

OCC's argument that the Stipulation violates the third part of the Commission's test because it does not include a commitment to provide a comparison of Duke's GCR price to suppliers' prices for natural gas is also meritless. Duke's implementation of a shadow-billing mechanism has no bearing on whether the Stipulation meets the three-

²⁹ OCC Initial Brief at 16.

³⁰ *Id.*

part test,³¹ and is unrelated to any of the issues raised in either the management performance audit or the Stipulation. Just as it did in 2015, the Commission should find that the OCC's shadow-billing argument is beyond the scope of this GCR proceeding and deny its recommendation.

C. The Testimony of Jerome D. Mierzwa Complies with All Commission Rules and Requirements and Should Not Be Stricken from the Record.

OCC's initial brief also reaffirms its objection and motion to strike the oral testimony of Jerome D. Mierzwa, Principal and Vice President of Exeter Associates, Inc. ("Exeter"), on a finding that the testimony Mr. Mierzwa provided during the September 10, 2019 hearing is improper.³² In support, OCC argues that because Commission Staff did not pre-file any written testimony on Mr. Mierzwa's behalf as required under the Commission's rules, his oral testimony "severely prejudiced" OCC from having an opportunity to receive notice of that testimony, analyze its contents, and prepare cross-examination.³³ The OCC's claim, however, is a matter of form over substance, and should be dismissed.

Under Ohio Admin. Code 4901-1-29(C), an expert witness that did not pre-file written testimony may be permitted to present oral testimony at hearing so long as that testimony will not unduly delay the proceeding or unjustly prejudice any other party. Here, the record reflects that Mr. Mierzwa offered oral testimony to clarify whether the Stipulation adopted each of the recommendations contained in Exeter's management

³¹ See *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 15-218-GA-GCR et al., Opinion and Order, at ¶59 (September 7, 2016).

³² OCC Initial Brief at 17.

³³ OCC Initial Brief at 17-18.

performance audit in full.³⁴ Mr. Mierzwa's testimony did not delay the hearing because it was limited to the information contained in the management performance audit and Stipulation. Moreover, neither the OCC, nor any other party, was prejudiced by the testimony since each party received a fair opportunity to cross-examine Mr. Mierzwa at the conclusion of Commission Staff's direct examination.³⁵ Accordingly, the OCC's objection and request to strike Mr. Mierzwa's testimony should be dismissed.

III. CONCLUSION

The Stipulation reasonably and efficiently resolves the issues presented in this case. It was a product of serious bargaining among capable, knowledgeable parties and does not violate any important regulatory principle or practice. Despite OCC's arguments to the contrary, the Stipulation benefits ratepayers, it serves the public interest and does not violate any important regulatory principle or practice. Therefore, IGS respectfully requests that the Commission approve and adopt the Stipulation without modification.

Respectfully submitted,

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³⁴ Tr. at 29-30.

³⁵ Tr. at 31-32.

CERTIFICATE OF SERVICE

I certify that this *Initial Post-Hearing Reply Brief of Interstate Gas Supply, Inc.* was filed electronically with the Docketing Division of the Public Utilities Commission of Ohio on this 29th day of October 2019.

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Summary: Reply Brief electronically filed by Mr. Michael A Nugent on behalf of Interstate Gas Supply, Inc.